The CORPORATION JOURNAL

Trademark ®

In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, CT Corporation System and associated companies deal with and act for lawyers exclusively.

L. 22, No. 9 December 1958—January 1959 Complete No. 418

lished by The Corporation Trust Company and Associated Companies

warp **AND** woof

the warp: continuous, uninterrupted service by an organization to which statutory representation is the most important business in the world . . . knowing, fast handling of process served . . . real help—complete, dependable information—on state report and tax requirements . . . a continent-wide system of offices and representatives for gathering and distributing that information.

the woof: experience. CT is now beginning its 68th year of service to lawyers.

You can't get better protection for a corporate body than the whole-cloth protection provided by the CT System of Corporate Protection.

The
CORPORATION JOURNAL

Trademark ®

DECEMBER 1958—JANUARY 1959

Contents

Recent Decisions

Along with your analysis of the Technical Amendments Act of 1958 and its possible benefits to your clients, you may also want to determine what incorporation means in the way of initial costs and annual taxes.

Perhaps, also, you would like to examine the statutory provisions governing coporate title, capitalization, voting rights, dividends, amendments, by-laws, corporate powers, meetings, books and records, etc.

You can get a quick, sure look at all that information simply by calling the nearest CT office and asking for the Costs and Features of the state or states of interest to you. The information is for lawyers only. It is free and involves no obligation of any kind.

what constitutes doing business

Alaska

CHAPTER 126 of the Session Laws of Alaska, 1957, contains provisions prohibiting foreign corporations from transacting business in Alaska without first procuring a certificate of authority to do so. Failure to procure a certificate of authority before engaging in business closes the courts of Alaska to the corporation and its assignees until it obtains a certificate of authority.[1]

Section 99 of Chapter 126 of 1957 contains the following statement of what does not constitute doing business in Alaska so as to require qualification:

> "Without excluding other activities which may not constitute transacting business in Alaska, a foreign corporation shall not be considered to be transacting business in Alaska, for the purposes of this Act, by reason of carrying on in Alaska any one or more of the following activities: (a) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes. (b) Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs. (c) Maintaining bank accounts. (d) Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities. (e) Effecting sales through independent contractors. (f) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without Alaska before becoming binding contracts. (g) Creating evidences of debt, mortgages, or liens on real or personal property. (h) Securing or collecting debts or enforcing any rights in property securing the same. (i) Transacting any business in interstate commerce. (j) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature."

The Alaska decisions relating directly to the subject of "doing business" from the viewpoint of the necessity of qualification are few in number.[2]

The interstate commerce clause of the Federal Constitution, relating to commerce "among the several States", now embraces commerce with respect to Alaska as a *State*. With statehood, it may be anticipated that the courts of Alaska will, as occasion arises, apply and interpret the commerce clause much in the same way as the courts of other states have generally applied and interpreted it. The activities cited above in Section 99 as not constituting the doing of business in Alaska reflect the conclusions reached by the Supreme Court of the United States and the courts of the other states.

---

[1] Section 117, Chapter 126, Session Laws of 1957.

[2] *Van Schuyver Co. v. Breedman*, 5 Alaska Reports 260, appeal dismissed, 225 Fed. 1023 (interstate commerce); *National Independent Fisheries Co. v. Juneau Cold Storage Co.*, 6 Alaska Reports 44 (single act); *First National Bank of Seattle v. Fish et al.*, 2 Alaska Reports 344 (maintaining suit); *Ross-Higgins Co. v. Protzman et al.*, 278 Fed. 699 (maintaining suit).

Corporation v. Partnership
A New Look

ATTORNEYS, aware of the numerous advantages of the corporate form of organization, have nevertheless hesitated to advise the incorporation of many small businesses because of adverse tax consequences. The advantages of the corporate form, e. g. perpetual existence, separate legal entity, limited liability, the ability to enlist capital through the sale of stock, the right to deduct from corporation income contributions to a pension trust, have often been outweighed by the compelling fact that corporate income was taxed to the corporation and, when distributed, included in the personal income of the shareholders and taxed again. What has been described as a "sleeper" provision of the Technical Amendments Acts of 1958 permits many small corporations to avoid this result, and thus removes for numerous partnerships and proprietorships an outstanding obstacle to incorporation.

The Technical Amendments Act of 1958 has added a new Subchapter "S",* comprising Sections 1371-1377, and a new Section 6037 relating to information returns, to the Internal Revenue Code of 1954. Under these provisions, the shareholders of a "small business corporation" may elect to include in their personal income for tax purposes the current taxable income of the corporation, each shareholder including in his gross income for his taxable year in which or with which the taxable year of the corporation ends, the amount he would have received as a dividend if there had been distributed pro rata, on the last day of the corporation's taxable year, an amount equal to the corporation's undistributed taxable income for the corporation's taxable year. When such corporate earnings are later distributed, the shareholder is not required to pay any further tax. This income is treated, generally, as ordinary income to the shareholder without the retention of any special characteristics it might have had in the hands of the corporation. However, in the case of long-term capital gains, the special characteristics carry over to the shareholder level, but the shareholder is not entitled to the dividends received credit in respect of this income. The accumulated earnings and profits of an electing corporation are reduced to the extent that its undistributed income is included in the gross income of the shareholders.

Each shareholder is allowed as a deduction from gross income his pro rata share of the corporation's net operating loss for the taxable year. (Such share is the sum of the portions of the corporation's daily net operating loss attributable on a pro rata basis to the shares held by him on each day of the taxable year.) These losses are treated in the same manner as any loss which the individual might have from a proprietorship. However, there is no carryover or carry-back at the corporate level of operating losses to or from a year in which the stockholders have elected to

* The provisions of the new Subchapter "S" appear in the Code Volume of **CCH Standard Federal Tax Reporter.** T. D. 6317, which prescribes the manner of making the election, is reproduced at ¶ 6716, Vol. 6. Form 2553, to be used in making the election, is reproduced at ¶ 6725, Vol. 6.

come within the provisions of Subchapter "S". Provision is made for the redetermination of the basis of the shares to the shareholders as a result of "undistributed income" and net operating losses.

In order to be eligible for this tax treatment, a corporation must be a "small business corporation," defined as a domestic corporation which is not a member of an affiliated group and which does not have more than ten shareholders, does not have as a shareholder a person (other than an estate) who is not an individual, does not have a nonresident alien as a shareholder, and does not have more than one class of stock. The election to be valid, must have the consent of all who are shareholders on the first day of the taxable year in question, or, if the election is made after the first day, by all who are shareholders on the day of the election.

For any taxable year of the corporation which begins after December 31, 1957, and before September 3, 1958, and which ends after September 2, 1958, the election must have been made on or before December 1, 1958, or on or before the last day of the corporation's taxable year, whichever was earlier. For subsequent years the election must be made during the first month of the taxable year, or during the month preceding such first month. The election is effective for the taxable year of the corporation for which it is made, and for all succeeding taxable years unless it is terminated.

Termination comes about if a new shareholder does not consent to the election, if all the shareholders agree to revoke the election, if the corporation ceases to meet the requirements of the definition of a small business corporation, if it derives more than 80% of its gross receipts from sources outside the United States, or more than 20% of its gross receipts from royalties, rents, dividends, interest, annuities, and sales or exchange of stock or securities.

It is possible that many partnerships and proprietorships, dissuaded in the past from incorporating by prospective higher taxes, may now find it profitable to reconsider the question of incorporation in the light of Subchapter "S".*

* Consideration should be given to the impact of state taxes upon an electing corporation and its shareholders.

domestic corporations

CONNECTICUT

Beneficiaries of trust held not entitled to inspect books of corporation where corporate stock stood in name of trustee.

Plaintiff sought to examine the books of the defendant corporations "in order to determine whether or not said corporation was being properly managed and whether or not plaintiffs' interests were being properly protected." The examination having been refused, plaintiffs feared the corporation was not being managed to the best interests of all the stockholders, but that its assets were being diverted to the private interests of one of the individual defendants. Plaintiffs, however, were not stockholders but were beneficiaries under a testamentary trust of which the individual mentioned was trustee. The only relief sought was a writ of mandamus ordering the defendants to permit the plaintiffs or their accountants to inspect the books.

The Superior Court of Connecticut ruled that plaintiffs were not entitled to the relief they sought, on the ground that they did not have the legal right to examine the books and records. The court observed that the trustee possessed the incidents of ownership and that the plaintiffs possessed none of these incidents.

Brecker et al. v. Nielsen et al., 143 A. 2d 463. Charles Stroh and William D. Shew of Hartford, for plaintiffs. Shepherd, Murtha & Merritt of Hartford, for defendants.

DELAWARE

Stockholders ruled entitled to inspect stock ledger where purpose was to contact other stockholders to support slate of directors and to purchase additional stock, regardless of whether another corporation controlled by them was in substantial competition with the corporation.

Stockholders of at least 8,000 shares filed a petition for mandamus in the Superior Court of New Castle County to compel the inspection of the stock ledger of appellant company. The writ was granted and that court refused a stay pending appeal, and the corporation appealed. On motion for a stay pending appeal, the Supreme Court of Delaware upheld the Superior Court in granting a motion for summary judgment, ruling in favor of these stockholders. The State Supreme Court noted that they were engaged in a contest with the management of the company for its control and desired to inspect the stock ledger for the purpose of communicating with the other stockholders and that they wished to solicit support for their slate of directors at a forthcoming stockholders' meeting of the company, or

to attempt to buy additional stock from the other stockholders, or both.

The higher court regarded as immaterial (a) whether a corporation controlled by these stockholders was in substantial competition with the appellant company, and (b) the amount of their investment in recent stock purchases and the terms of such purchases.

E. L. Bruce Company v. State of Delaware on relation of Gilbert et al., 144 A. 2d 533. Henry R. Horsey of Berl, Potter & Anderson of Wilmington and Thomas F. Daly of Lord, Day & Lord of New York City, for appellant. Aaron Finger of Richards, Layton & Finger of Wilmington, for appellee.

ILLINOIS

Transfer agent upheld in refusing to comply with a stockholder's demand for inspection of stockholders' lists until after receiving authority from the stockholder's corporation.

Plaintiff, a shareholder in an Illinois corporation for which the defendant national banking association was transfer agent, brought this action to recover a statutory penalty for allegedly wrongful refusal to allow plaintiff to examine the corporation's record of stockholders. Upon receipt of plaintiff's demand for the production of the record of shareholders, the transfer agent contacted the company. Five days after the demand, the attorney for the transfer agent informed plaintiff's attorney that plaintiff would not be permitted to examine the record of shareholders until the plaintiff's corporation could determine whether plaintiff's demand to make such an examination of the records was for a proper purpose and that the matter would be presented to that corporation's board of directors at its next regular meeting. Nineteen days after demand, following such a meeting, the transfer agent received a certified copy of a resolution that the corporation had no objection to compliance by the transfer agent with plaintiff's demand. On a day three days less than a month after demand, the plaintiff called at the office of the transfer agent and made an examination of the list of the corporation's shareholders.

The Appellate Court of Illinois, First District, Second Division, concluded that a proper construction of the pertinent statute, Section 45 of the Illinois Business Corporation Act, "does not render the transfer agent liable for refusal to comply with a stockholder's demand to examine the records, unless such transfer agent is acting contrary to the directions of its corporate principal," and that, to comply with plaintiff's demand, it was necessary for the agent to get authority to do so from the principal.

Sterling v. City National Bank & Trust Company of Chicago, 149 N. E. 2d 789. Edward Slovick of Chicago, for appellant. Dallstream, Schiff, Hardin, Waite & Dorschel, and John B. Robinson, Jr., of Chicago, of counsel, for appellee.

foreign corporations

CALIFORNIA

Blue Sky law regarded as not giving its administrator jurisdiction over consummation of amendment of charter of qualified Delaware corporation.

After the qualification of plaintiff Delaware corporation had been effected in California, the stockholders voted to change the method of electing directors from cumulative voting to straight voting, as permitted by Delaware law, by amending the certificate. Defendant State Commissioner of Corporations contacted plaintiff's attorneys and expressed the opinion that the proposed amendment would constitute "a change in the rights, preferences, or restrictions on the outstanding securities of the corporation and accordingly would amount to a 'sale' within the definition of Section 25009(a) of Corporations Code," and that solicitation of proxies in connection with such proposed amendment likewise would constitute a "sale" of securities; that pursuant to Section 25500 of the Corporations Code the corporation should not engage in the solicitation of proxies nor hold a stockholders' meeting for the purpose of the amendment, nor should the amendment be consummated until the company had first applied for and obtained a permit from the Commissioner authorizing such actions.

Plaintiff company sought a review of the extent of the Commissioner's jurisdiction, that official having denied plaintiff a permit. The California Superior Court concluded that the "Corporate Securities Law" of California, of which the cited sections constituted a part, was not applicable to this company's situation which represented activities involving internal management, and that these matters were not within the Commissioner's jurisdiction to control or regulate.

Western Air Lines, Inc. v. Stephenson, Commissioner of Corporations, Superior Court for County of Los Angeles, July 17, 1958.

DISTRICT OF COLUMBIA

Foreign corporation doing business in District without certificate of authority may maintain suit by subsequently obtaining certificate.

Plaintiff New York corporation brought this suit on a contract entered into in the District of Columbia. Defendant moved to dismiss on the ground that plaintiff had failed to qualify as a foreign corporation in the District, and was therefore prohibited by statute from maintaining "an action at law or in equity in any court of the District until such corporation shall have obtained a certificate of authority."

The United States District Court for the District of Columbia, in an opinion citing, and substantially in agreement with its opinion in *Hill Lanham, Inc. v.*

Lightview Development Corp., decided January 31, 1957, (The Corporation Journal, October—November, 1958, page 147), held that the plaintiff was not barred, and by subsequent compliance with the statute could maintain the action. The motion to dismiss was denied.

*Federal Loose Leaf Corp. v. Woodhouse Stationery Company,** U. S. District Court for the District of Columbia, June 12, 1958.

* The full text of this opinion is printed in the **District of Columbia Tax Reporter**, page 327.

NEBRASKA

Where unlicensed foreign corporation carried on varied activities in state, two-pronged service on its vice president and sales manager, and upon Secretary of State under statute, upheld.

Service upon appellant foreign corporation was effected by serving its vice president and sales manager and also by serving the Secretary of State under R. R. S. 1943, Section 21-1201. The Supreme Court of Nebraska concluded that service upon either was good. The vice president and sales manager had been in Nebraska on previous occasions promoting the company's interests. This was regarded as sufficient to uphold service of process upon him.

The appellant, a Texas corporation, sold its products in Nebraska through four wholesalers. These purchased the products direct and, in turn, sold them to drug stores and other retail outlets in Nebraska. Although it had no resident agent, merchandise or place of business in the state, the court noted that "it did carry on a very active program therein to sell its products." It had a non-resident travelling salesman, calling upon the trade, to whom it furnished a car. Orders obtained were sent to one of the four wholesalers, as designated by the purchaser, who filled the orders from stock previously purchased from the appellant. The company also had representatives attend local shows or exhibitions, called dealer's schools, sponsored primarily by the dealers, at which appellant's advertising material was passed out. The meetings were solely for the purpose of acquainting those present with the appellant's products and their use as a means to promote the sale thereof. The court regarded this as "doing business in this state sufficient to authorize service upon it by serving the Secretary of State as is authorized by Section 21-1201, R. R. S. 1943."

Brown v. Globe Laboratories, Inc. et al., 84 N. W. 2d 151. Kennedy, Holland, DeLacy & Svoboda, William Mueller, George W. Becker and G. L. DeLacy of Omaha, for appellant. Harold A. Prince of Grand Island; Gross, Welch, Vinardi & Kauffman of Omaha, for appellee.

Come Spring,

the flowers will bloom.

the problems of the annual meeting of stockholders will sprout.

Why Not Tell Your Clients

to consider CT as handler of the meeting details? CT meeting services, now used by hundreds of corporations, take away all the fuss and upset and bother of proxy tabulations. *Now* is the time to find out how inexpensive CT meeting services are. Ask at the nearest CT office.

NEW YORK

Corporation whose charter is forfeited for non-payment of taxes is not dead and cannot thereby avoid criminal sanctions.

Defendant New Jersey corporation was the owner of premises in New York State upon which an illegal still was discovered, and was convicted of violating the Alcohol Tax Laws. Defendant moved that its conviction be vacated and a new trial granted on the ground that its charter had been declared forfeited by proclamation of the Governor of New Jersey for non-payment of state taxes.

The United States Court of Appeals, Second Circuit, in affirming the conviction, stated that under N. J. Rev. Stat., Sec. 14:13-4, a dissolved corporation is continued as a body corporate for the purpose of prosecuting and defending suits, and under Sec. 14:13-14 it is continued for the purpose of defending any action or legal proceeding commenced in any court of the state against it. Sec. 54:11-5 authorizes reinstatement upon payment of taxes, and Sec. 54:10A-12 prohibits dissolution until taxes are paid. Thus, the court stated, corporations whose charters are forfeited for non-payment of taxes " 'are not dead' but 'merely asleep'; they are only 'in a state of coma' from which they may be revived." "We conclude that the coma is not deep enough to permit of the avoidance of criminal sanctions thus easily."

United States v. Indian Hill Farm, 225 F. 2d 282. Abraham L. Wax of New York City, for appellant. Robert Kirtland, Asst. U. S. Atty., S. D. N. Y., (Paul W. Williams, U. S. Atty., on the brief), of New York City, for appellee.

Foreign corporation held doing business in New York so as to be subject to jurisdiction where its owners were present in New York and active on its behalf, obtaining for it a substantial percentage of its revenue.

Plaintiff, a New York resident, brought this action against defendant Louisiana steamship company for injuries allegedly sustained on the high seas as a seaman on a vessel operated by defendant. Defendant moved to vacate the service on it on the ground that it was not subject to the jurisdiction of a New York court. Defendant Louisiana corporation had not filed a certificate of doing business in New York; it had no offices or employees in New York; its ships did not visit the port of New York; no directors' meetings were held in New York; no contracts were made in New York.

The City Court of the City of New York, New York County, confirmed a referee's report which found the defendant subject to jurisdiction in New York. Defendant was wholly owned by two other corporations. One of these, a Louisiana corporation, was present in New York on a permanent basis and engaged in the solicitation of business for the defendant in New York, obtaining for the defendant more than 18% of its gross revenue derived from cargo. The owner of the other 50% of defendant's capital stock was also active in New York on defendant's behalf, taking delivery in New

York of the vessel on which plaintiff was allegedly injured, outfitting it and signing on a local crew, which included the plaintiff. The court was ruled to have jurisdiction of the action.

Bonilla v. Gulf and South American Steamship Co., 174 N. Y. S. 2d 381. Murray A. Miller of New York City, for plaintiff. Tompkins, Boal & McQuade, Arthur M. Boal, Sr., and Arthur M. Boal, Jr., of counsel, of New York City, for defendant.

Foreign hotel company, soliciting business for hotel in another state through a local travel agency, ruled not subject to service of process.

Defendant corporation, operating a hotel in Florida, employed a New York partnership in the travel agency and hotel representation business, which acted for many hotels, to solicit and make reservations for the defendant. Plaintiff attempted to commence the action by service of summons upon a member of the partnership and defendant appeared specially to vacate this service. The New York Supreme Court, Appellate Division, Second Department, had affirmed an order of the Special Term denying defendant's motion. On appeal, the following question was certified to the Court of Appeals: "Was the order of the Special Term properly made?"

The Court of Appeals answered the question in the negative, regarding the company as not doing business so as to uphold service.

Miller v. Surf Properties, Inc., 4 N. Y. 2d 475, 151 N. E. 2d 874. William F. Laffan, Jr., of New York City, appearing specially. David M. Kahn and Harold M. Miller of White Plains, for respondent.

NORTH CAROLINA

Corporation ruled not doing business so as to be subject to service of process where it employed a person who recommended distributors for its goods who sold to their own customers.

Defendant Ohio corporation's Georgia agent, Franklin, recommended to it a person to act as distributor of its products in North Carolina. Franklin had no authority to sell the products or to collect accounts or otherwise to act for or on behalf of the company in North Carolina. On his recommendation, the defendant entered into a contract with Henry Glenn, who, as its local distributor, "was at liberty to sell for cash or on time and to adopt whatever name he saw fit but without any authority to act as agent or employee of the company or to incur any liability in its behalf. At no time did the company maintain any place of business in North Carolina or maintain parts or supplies for its products. It sold them outright to the distributor who paid for them before they came into his possession."

The plaintiff contended that the company was present in North Carolina and doing business in that state through Franklin and Glenn so as to subject it to the jurisdiction of the state courts.

The court, in finding that neither Franklin nor Glenn was local agent of any of the defendants, said that "an agent through whom the corporation may be served with process is one who exercises some control over and discretionary power in respect to the corporate functions of the company. He is one who stands in the shoes of the corporation in relation to matters of the corporation committed to his care. He must represent it in a general or limited capacity. He is the alter ego of the corporation." "A mere salesman or broker who takes orders and sends them to a foreign corporation for acceptance or distributor who buys and takes title to the chattels is not a managing or local agent and does not result in the corporation doing business in this state." Service upon the corporation was, therefore, set aside.

Edwards v. Scott and Fetzer, Inc. et al., 154 F. Supp. 41. N. Hunter Godwin, Reade, Fuller, Newsome & Graham, Bryant, Lipton, Strayhorn & Bryant of Durham, for plaintiff. Spears & Spears, Davies, Eshner, Johnson & Miller of Cleveland, Ohio, Haywood & Denny of Durham, for defendants.

UTAH

Statute which prohibits corporation, which has forfeited charter for failure to pay taxes, from doing intrastate business held not to prohibit bringing of a suit.

This action was brought to recover on a construction contractor's performance bond. The Third Judicial District Court, Salt Lake County, rendered judgments for the plaintiffs and defendant appealed on, among others, the ground that plaintiff's corporate charter had been forfeited for failure to pay taxes and that, therefore, the plaintiff could not maintain the action. Plaintiff, a Nevada corporation, was qualified to do business in Utah in 1950 when the contracts in litigation were entered into. Thereafter it failed to pay taxes which subjected its charter to forfeiture. It later paid up and had its charter reinstated and again forfeited for the same cause during the pendency of this litigation. The pertinent statutory provision is Sec. 59-13-61, U. C. A. 1953: "If a tax computed and levied hereunder is not paid * * * a foreign corporation * * * shall thereupon forfeit its rights to do intrastate business in this state."

The Supreme Court of Utah stated that a question presented was "whether the forfeiture of the corporation's rights 'to do intrastate business in this state' would preclude it from bringing a suit to protect rights which initiated while it was qualified to do business." The court noted that it had held that before the acts of a foreign corporation could constitute doing business, there must be some degree of continuity or regularity, and some manner of entering into direct business transactions with others. It concluded that the bringing of one suit to protect its rights did not constitute doing intrastate business within the prohibition of the statute.

Prudential Federal Savings & Loan Association v. Hartford Accident and Indemnity Company, 325 P. 2d 899. Moreton, Christensen & Christensen of Salt Lake City, for Hartford Accident & Indemnity Co. Franklin Riter, Harry D. Pugsley of Salt Lake City, for Prudential Federal Savings & Loan Ass'n. Woodrow D. White, C. Preston Allen of Salt Lake City, for Felt Syndicate, Inc.

taxation

CONNECTICUT

Property sent into state for processing and remaining there less than seven months, held not subject to property taxes.

Plaintiff Maine corporation, with its principal place of business in Massachusetts, was engaged in the manufacture of woolen textiles. From time to time it employed a corporation in Connecticut to process wools and yarns at that corporation's plant in Norwich, Connecticut. The goods were returned to plaintiff at its principal place of business in Massachusetts or to other places, as directed by it. None of the wool or yarns remained in Norwich, Connecticut, for a period of more than seven months. The plaintiff was not carrying on a trading, mercantile, manufacturing or mechanical business in Norwich, Connecticut. Plaintiff sought to have stricken from the tax list of the town of Norwich an assessment of the average amount of its goods kept on hand during the years in question in the custody of the Connecticut company, alleging that the tax was laid upon property which was not taxable and that the property should be stricken from the tax list.

The Connecticut Supreme Court of Errors observed: "The crucial question in this case is whether the plaintiff's property, while it was in the hands of Yantic Woolen Mills, acquired a situs under our law so that it became subject to assessment and taxation by Norwich." The court ruled that the assessments were invalid on the grounds that the statute under which assessment was attempted made no provision for assessing an "average amount of goods," and that there was no assertion in the assessment list, nor did the town claim to have shown, that the plaintiff exercised its corporate powers in Norwich or that any specific amount of these wools and yarns or any particular items of them were there for seven months or more preceding the assessment date and so, under the statute, Section 1751, might be considered as "permanently located" in the town.

*Security Mills, Inc. v. Town of Norwich,** Connecticut Supreme Court of Errors, May Term, 1958. Charles V. James of Norwich, for the appellant (plaintiff). Orrin Carashick of Norwich, for appellee (defendant).

---

* The full text of this opinion is printed in the **State Tax Reporter,** Connecticut, page 10,039.

GEORGIA

Income tax ruled to apply to entire net income of sales corporation, having no place of business outside Georgia, selling product of another company.

The taxpayer, a sales corporation, sued to recover alleged overpayment of income tax for three years. Its office and place of business was located in Fulton County, Georgia. There was no evidence that it had or maintained a branch office or place of business outside the state at which any of its business was transacted which pro-

duced any part of its income. It held the exclusive right to sell coca-cola syrup of another company in Georgia and a number of other states. For the years in question its entire income was derived from unsolicited orders received without expense to it from buyers throughout the states embraced in its franchise. It gave shipping instructions from its Georgia office to the syrup company which filled the orders, all goods being shipped upon the terms of payment therefor at the point of destination.

The taxpayer contended it was entitled to a refund based upon an apportionment of its income, because part of its income came from business done elsewhere than in Georgia. The Georgia Supreme Court, ruling in favor of the state, concluded that the taxpayer was "liable to this state for income tax upon the net income derived from its entire business operations. Its business is done in Georgia and the destination or origin of its shipments in no wise alters this fact."

*State of Georgia et al. v. Coca-Cola Bottling Company,** 104 S. E. 2d 574. Eugene Cook, Attorney General; Ben F. Johnson, Jr., Broaddus B. Zellers, Hugh Gilbert, Deputy Asst. Attorneys General, of Atlanta, for plaintiff in error. Edward R. Kane and Jones, Williams, Dorsey & Kane of Atlanta, for defendant in error. Louis Regenstein, Jr., Smith, Kilpatrick, Cody, Rogers & McClatchey, Powell, Goldstein, Frazer & Murphy, Alston, Sibley, Miller, Spann & Shackelford, Sutherland, Ashill & Brennan, Bird & Howell and Arnall, Golden & Gregory of Atlanta; Swinson, Elliott & Schloth, J. Robert Elliott and W. Willis Battle of Columbus, for parties at interest.

* The full text of this opinion is printed in the **State Tax Reporter**, Georgia, page 10,157.

Small Business Investment Act of 1958

This act, Public Law 699, fosters the incorporation of small business investment companies, primarily under state laws, or by the Small Business Administration where it determines such companies cannot be chartered under state law and operate in accordance with the purposes of this Act. Through it, Congress has provided a new system whereby small business concerns will have better access to equity capital and to long-term loans, and has supplemented other Federal loan programs in aid of small business. Upon obtaining the approval of the Small Business Administration, such small business investment companies become vehicles for making loans directly to small business concerns or for the purchasing of debentures of such firms. The Act authorizes $250 million to be appropriated for the new financing program, which amount is to be operated as a revolving fund. Allied with this program are certain provisions of the Technical Amendments Act of 1958 containing federal income tax benefits for small businesses generally.

state legislation

Nova Scotia—A 3% retail sales tax becomes effective January 1, 1959, being imposed by House Bill 129 of 1958, The Hospital Tax Act.

South Carolina—Withholding at the source from non-residents will be required beginning January 1, 1959, under House Bill 1947.

Extending Corporate Activities into New States

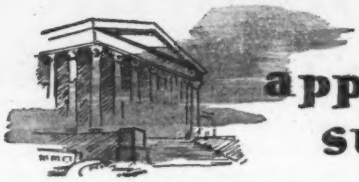
Counsel for corporations planning, near the close of the year, to extend their activities into new states, in which qualification is contemplated, usually give careful consideration to the dates on which qualification is to be effected. It has been found, in many instances, that if qualification and the carrying on of intrastate activities, are deferred until after January 1, there may be savings of taxes which would otherwise be due early in the new year. Also, the preparation and filing of certain tax returns, due early in the new year if qualification and business activities occur prior to January 1, may be postponed for approximately a year, if these steps are delayed until after the new year begins.

Discussions on Corporation Law

A Plea for Separate Statutory Treatment of the Close Corporation. New York University Law Review, May, 1958, page 700.

The Legal Status of Joint Venture Corporations, by Thomas F. Broden and Alfred L. Scanlan. 11 Vanderbilt Law Review, June, 1958, pp. 673-696.

The Right of Incorporation under the Philippine Incorporation Law, by Sulpicio Guevara. Philippine Law Journal, July, 1958, page 349.



appealed to the supreme court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

GEORGIA. Docket No. 33. *Stockham Valves & Fittings, Inc. v. Williams,* 101 S. E. 2d 197. (The Corporation Journal, December 1957—January 1958, page 55.) Corporation income tax—interstate commerce. **Petition for writ of certiorari filed, February 3, 1958. Certiorari granted, March 17, 1958.** (78 S. Ct. 670.) **Argued, October 15, 1958.**

LOUISIANA. Docket No. 142. *Brown-Forman Distillers Corporation v. Collector of Revenue,* 101 So. 2d 70. (The Corporation Journal, August—September, 1958, page 134.) Income tax—income received by corporation engaged only in interstate commerce. **Petition for writ of certiorari filed, June 30, 1958.**

MINNESOTA. Docket No. 12. *Minnesota v. Northwestern States Portland Cement Co.,* 84 N. W. 2d 373. (The Corporation Journal, August—September, 1957, page 14.) Income tax—income received by corporation engaged only in interstate commerce. **Appeal filed, November 12, 1957. Probable jurisdiction noted, January 6, 1958. Argued, October 14, 1958.**

OHIO. Docket No. 9. *Youngstown Sheet & Tube Co. v. Bowers,* 166 O. S. 122, 140 N. E. 2d 313. (The Corporation Journal, February—March, 1958, page 72.) Property taxes — ores imported from foreign countries. **Appeal filed, October 30, 1957. Probable jurisdiction noted, January 6, 1958. Motion of City of Algoma to strike brief, as amici curiae, of Bruce Bromley, et al. denied, October 20, 1958.**

PENNSYLVANIA. Docket No. 434. *Commonwealth v. Universal Trades, Inc.,* 141 A. 2d 204. (The Corporation Journal, August—September, 1958, page 135.) Capital stock tax basis—intangible assets located outside Pennsylvania. **Appeal filed, October 9, 1958.**

WASHINGTON. Docket No. 163. *United States Steel Corporation v. Washington,* 316 P. 2d 1099. (The Corporation Journal, February—March, 1958, Page 74.) Business and occupation tax—interstate and local activities—apportionment. **Appeal filed, July 10, 1958. Motion to dismiss granted and appeal dismissed for want of a substantial Federal question, October 13, 1958.**

WISCONSIN. Docket No. 297. *Prime Mfg. Co. v. Kelly et al.,* (*Graham-White Sales Corp. v. Prime Mfg. Co.*) 87 N. W. 2d 788. (The Corporation Journal, October—November, 1958, page 153.) Service of process—doing business—office in state. **Appeal filed, August 22, 1958. Motion to dismiss granted and appeal dismissed for want of a substantial Federal question, October 20, 1958.**

---

* Data compiled from **CCH U. S. Supreme Court Bulletin.**

regulations and rulings

Delaware—A corporation cannot obtain a refund of claimed overpayments on a tentative income tax return, since under Sec. 1912, Title 30, of the Delaware Law, refunds may be made only after the final tax liability has been determined. However, even after final tax liability has been ascertained, the State Tax Commissioner is not authorized to pay the refund. Sec. 1912, Title 30, merely provides that overpayments shall be refunded to the taxpayer, but the Corporation Income Tax Law contains no appropriation for such refunds, and no specifications of the sources of funds or authorization to expend refunds for that purpose. (Opinion of the Attorney General, State Tax Reporter, Delaware, ¶ 200-027.)

Indiana—A foreign corporation may be admitted to do business in Indiana when its purpose is to loan money secured by mortgage on Indiana real estate. Since a mortgagee does not own land, the statute which denies the right of foreign corporations to be admitted to do business in the state when their sole purpose is to acquire, own or hold real estate in the state does not prevent the admission of a foreign mortgage loan company. There is specific statutory prohibition, however, against corporations acting as mortgage guarantee companies. (Opinion of the Attorney General, State Tax Reporter, Indiana, ¶ 200-040.)

A net income tax, including one featuring graduated rates, would not violate the state constitution, since the authorization for an income tax is very broad and since the requirement that there must be "a uniform and equal rate of assessment" has been consistently construed to be applicable only to ad valorem or property taxation. There is no provision in the constitution which requires the retention of any form of property taxation. (Opinion of the Attorney General, State Tax Reporter, Indiana, ¶ 200-042.)

South Dakota—Gasoline and other petroleum products stored in terminal storage tanks on the assessment date are subject to property tax. The gasoline is not considered to be in interstate commerce. It has reached the destination of its first shipment, and is not held in the state in accommodation to transportation, but for the business purposes of the company. (Opinion of the Attorney General, State Tax Reporter, South Dakota, ¶ 200-029.)

Utah—As long as a foreign corporation is doing business in the state, it must have an agent upon whom service of process may be made. If the agent is withdrawn or resigns and the corporation fails or neglects to appoint another, it will be disqualified from doing business in Utah. (Opinion of the Attorney General, State Tax Reporter, Utah, ¶ 4-004.)

some important matters

For December and January

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, inciuding information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

Alabama — Annual Application Fee for permit to do business due February 1. Quarterly Withholding Tax due on or before January 31.

Alaska — Annual Corporation Tax due on or before January 1.

Arizona — Quarterly Withholding Tax due on or before January 31.

Colorado — Quarterly Withholding Tax due on or before January 31.

Delaware — Annual Report due on or before first Tuesday in January.—Domestic Corporations.

Withholding at Source Returns due January 31.—Corporations paying compensation to Delaware employees.

District of Columbia — Annual Report published and filed between January 1 and January 20.—Domestic corporations formed under 1901 Act.

Application for license in connection with District Franchise (Income) Tax due before January 1.

Georgia — Annual License Tax Report due on or before January 1.

Indiana — Information and Withholding Returns due on or before January 31.

Iowa — Quarterly Retail Sales Tax due on or before January 31.

Kentucky — Quarterly Withholding Tax due on or before January 31.

Louisiana — Annual Report due February 1.—Domestic Corporations.

Maryland — Returns of Information at the source and Quarterly Withholding Tax due on or before January 31.

Missouri — Annual Franchise Tax due on or before December 31.
Quarterly Retail Sales Tax due on or before January 15.

New Hampshire — Annual Maintenance Fee due on first business day of January.—Foreign Corporations.

North Dakota — Quarterly Retail Sales Tax due on or before January 31.

Oregon — Quarterly Withholding Tax due on or before January 31.

South Carolina — Annual Statement due January 31.—Foreign Corporations.

South Dakota — Quarterly Retail Sales Tax due on or before January 15.

Utah — Quarterly Retail Sales Tax due on or before January 30.

Vermont — Quarterly Withholding Tax due on or before January 31.

West Virginia — Annual Business (Gross Sales) Tax due January 31.

supplementary literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

Heads I Win, Tails You Lose. An explanation of the possible consequences to the corporation which takes a chance [?] on doing business in states outside the state of its incorporation without complying with governing laws, rulings and regulations.

Spot Stocks Mean More Sales. A review of the advantages *and* dangers of using spot stocks at strategic shipping centers to bolster and increase sales.

Corporate Tightrope Walking. Of interest to counsel for and the officers of any corporation carrying on business in interstate commerce.

Agent for Process. Case histories of corporation officials who suddenly found out that trouble can take funny bounces when statutory representation is entrusted to a business employee.

Before and After Qualification. A complete list of aids and services—including those supplied without charge—which CT furnishes for lawyers working on foreign corporation matters.

Corporate Confusion. A discussion of the wriggling, twisting, seemingly opposite court decisions which make building a pattern for out-of-state operations by a corporation a risky business these days.

A Pretty Penny . . . Gone! What it can cost a corporation—as shown by actual court cases—if its agent cannot be found when service of process is attempted.

Suppose the Corporation's Charter Didn't Fit! Shows how charter provisions which suit well enough at time of organization may be handicaps for the corporation in later life—some measures to avoid them that a lawyer may help his client to take.

Some Contracts Have False Teeth. Interesting case-histories showing advisability of getting lawyer's advice before contracting for work outside home state, even for federal government.

THE CORPORATION TRUST COMPANY
120 Broadway, New York 5, N. Y.

Form 3547 requested

The CORPORATION JOURNAL

The Corporation Journal is published by The Corporation Trust Company bi-monthly, February, April, June, August, October and December. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers and accountants upon written request to any of the company's offices.